

REMARKS

This application is believed to be in condition for allowance for the reasons that follow.

The Appendix of this reply includes rebuttal evidence that was not presented earlier because the last Office Action stated new reasons for not finding the previously filed Declaration persuasive.

Status of the Claims

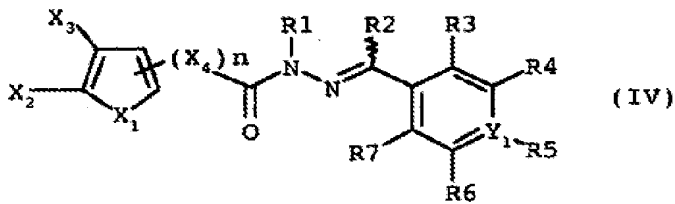
Claims 1, 6, 7 and 14-18 remain in this application.

Claim Rejections-35 USC §103

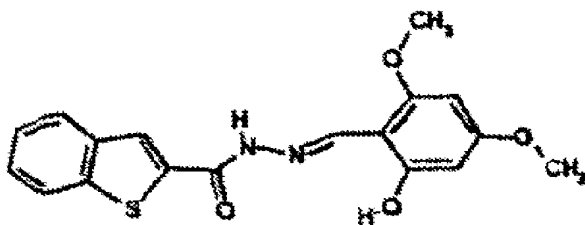
Claims 1, 6, 7 and 14-18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over CAI et al. U.S. 2003/0105140 A1 ("CAI").

This rejection is respectfully traversed.

Claim 1 describes compounds of general formula (IV):

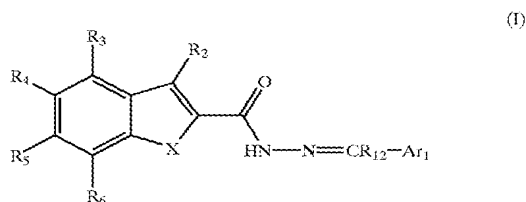


The elected species CGP02-01, or N'-[(1E)-(2-hydroxy-4,6-dimethoxyphenyl)methylene]-1-benzothiophene-2-carbohydrazide, is further described in claim 6:



The compounds according to the claimed invention are useful for treating diseases associated with lipid metabolism disorders, e.g., as described in claims 16-18.

The maintained position has been that the elected compound falls within the scope of formula (I) of CAI:



This generic formula covers a very broad range of compounds, which happens to overlap the compounds described by the present claim 1.

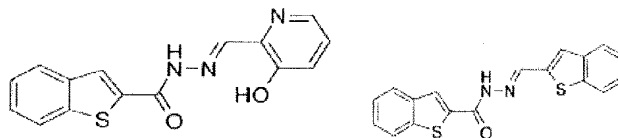
However, there is both (1) the presence of a property in the claimed compounds not present in the CAI compounds and (2) the absence of a property in the claimed compounds disclosed the CAI compounds.

(1) The claimed compounds possess therapeutic activity for treating lipid metabolism disorders.

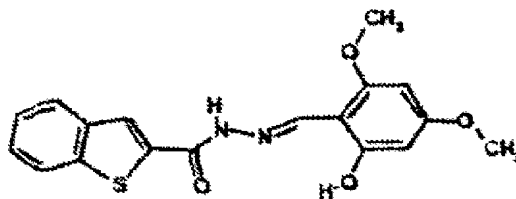
As noted in MPEP 716.02(a):

Presence of a property not possessed by the prior art is evidence of nonobviousness. *In re Papesch*, 315 F.2d 381, 137 USPQ 43 (CCPA 1963)

Applicant first submitted on March 10, 2010 a Declaration under 37 CFR 1.132 by Gerard Marguerie, one of the named co-inventors. In this Declaration, a comparison was made between the claimed compounds and the compounds disclosed in CAI, wherein X is S, as the compounds of CAI in which X is a sulfur atom are closer to claimed invention (in terms of structure) than compounds in which X would be N or O. The Declaration concluded that, contrary to CAI (and unexpectedly in view of CAI), e.g. in claims 32 and 33, the two compounds, which possess therapeutic activity for treating cancer:



do not possess the same activity as the elected compound, CGP 02-01, i.e. for treating diseases associated with lipid metabolism disorders:



Regarding the issues raised in the Office Action concerning this Declaration, the Declarant identified the presence of a therapeutic activity compared to an absence of the therapeutic activity, which would be both statistically and practically significance.

Moreover, as previously argued, the existence of the therapeutic activity is not only unexpected in view of the fact that CAI is silent to teaching such activity, but also in view of the fact that CAI asserts that the aryl group Ar1 does not affect activity when X is a sulfur atom. For example, in claim 32 of CAI, X is S and Ar1 is "optionally substituted aryl or heteroaryl", and Ar1 may further be selected from the group in claim 33. Accordingly, CAI leads one to believe that the above depicted three compounds, which differ solely by their "Ar1 groups" should equivalent for the activity desired CAI. The Declaration, however, points to an Ar1 group of CGP 02-01, which is substituted aryl group 2-hydroxy-4,6-dimethoxyphenyl, has the claimed therapeutic activity.

Consequently, the presence of the therapeutic activity, e.g. as recited in claims 16-18, which is not found in the CAI compounds, as identified in the Declaration is evidence of nonobviousness.

**(2) The claimed compounds do not
possess the ability to activate capsases.**

As noted in MPEP 716.02(a):

Absence of property which a claimed invention would have been expected to possess based on the teachings of the prior art is evidence of unobviousness. *Ex parte Mead Johnson & Co.* 227 USPQ 78 (Bd. Pat. App. & Inter. 1985).

The compounds disclosed by CAI are activators of caspases (e.g., in the Abstract).

The attached Declaration under 37 CFR 1.132 by Gerard Marguerie provides experimental results that evaluate the effect of the elected species compound, CGP 02-01, on the enzymatic activities of caspase 3 and 7. These experimental results, however, demonstrate that the compound CGP 02-01 of the present invention does not activate capsases, contrary to compounds disclosed by CAI.

Consequently, the absence of this property (i.e., to activate capsases) confirms that the claimed invention is unobvious over CAI.

In view of the two Declarations, it is submitted that compounds disclosed in CAI have a totally different therapeutic activity compared to the claimed compounds. The claimed compounds have (1) an unexpected therapeutic activity that is not disclosed in CAI and (2) an unexpected absence of activity disclosed in CAI.

Therefore, the claimed invention is not rendered obvious by CAI, and withdrawal of the rejection is respectfully requested.

Conclusion

In view of the foregoing remarks (and newly cited evidence), this application is in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis is respectfully requested.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our credit card which is being paid online simultaneously herewith for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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APPENDIX:

The Appendix includes the following item:

- a Declaration under 37 C.F.R. § 1.132 by Gerard Marguerie